

STATE OF MICHIGAN
COURT OF APPEALS

TERRANCE BURKHARDT,

Plaintiff-Appellant,

v

MICHAEL L. BAILEY and BOND
CORPORATION,

Defendants-Appellees.

UNPUBLISHED

September 21, 2001

No. 223706

Ogemaw Circuit Court

LC No. 99-652674-CH

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Bailey owned vacant property secured by a mortgage held by Bond Corporation. Bailey failed to pay property taxes and, in May 1997, Burkhardt purchased the property at a tax sale. On August 31, 1998, Burkhardt obtained a tax deed to the property. Burkhardt served Bailey with notice of reconveyance; however, Bailey took no steps to redeem the property within six months after receiving the notice. See MCL 211.73a; MCL 211.140(1).

On July 7, 1999, Burkhardt filed a complaint seeking to quiet title to the property, seeking to reform the mortgage, or in the alternative to have the mortgage declared satisfied. Bailey did not answer the complaint, and was defaulted. Bond Corporation moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that Burkhardt's failure to provide it with the required notice rendered the tax deed void. The trial court granted summary disposition in favor of both Bond Corporation and Bailey, and declared Burkhardt's tax deed void. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

We affirm in part and reverse in part the trial court's order granting summary disposition in favor of Bond Corporation and Bailey and declaring Burkhardt's tax deed void. If a party claiming title to property under a tax deed fails to make a bona fide effort to give the required notice of reconveyance to all parties entitled to receive such notice within five years after obtaining the deed, the party claiming title is barred from asserting that title. MCL 211.73a.

After purchasing the property and obtaining a tax deed, Burkhardt served the required notice on Bailey but did not serve notice on Bond Corporation, notwithstanding the fact that the mortgagee named in an undischarged, recorded mortgage is entitled to notice. MCL 211.140(1)(d). At the time he filed the action to quiet title, approximately four years remained for Burkhardt to give the required notice to Bond Corporation. Burkhardt's action was in effect premature; however, he was not yet precluded from claiming ownership of the property under the tax deed because five years had not yet passed without notice being given to all parties entitled to receive notice. MCL 211.73a; see, also, *Whetstone v Michigan Consolidated Gas Co*, 219 F Supp 121, 123 (ED Mich, 1963).

The trial court correctly granted summary disposition in favor of Bond Corporation and dismissed the case, but erred by declaring Burkhardt's tax deed void. We affirm the grant of summary disposition, but reverse that portion of the trial court's order declaring the tax deed void. If Burkhardt fails to serve the required notice on Bond Corporation within the specified five-year period, he will be barred from claiming title to the property under the tax deed. See MCL 211.73a. Of course, service of such notice would afford Bond Corporation the opportunity to redeem the property within six months. See MCL 211.140.

Furthermore, the trial court erred by granting summary disposition in favor of Bailey. Bailey took no steps to redeem the property within six months of receiving the notice of redemption. He lost the opportunity to redeem the property when he did not act in a timely manner to do so, and was not entitled to rely on Bond Corporation's argument that it did not receive proper notice. See *Halabu v Behnke*, 213 Mich App 598, 606; 541 NW2d 285 (1995). We reverse that portion of the trial court's order granting summary disposition in favor of Bailey.

Finally, Burkhardt's challenge to the validity of the mortgage held by Bond Corporation was not addressed by the trial court, and thus is not properly before us. Our review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987).

Affirmed in part and reversed in part.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jessica R. Cooper